IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7985 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BISMILLAKHAN AKBARKHAN PATHAN

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MR DJ BHATT for Petitioner

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/08/2000

ORAL JUDGEMENT

Rule. Mr KT Dave, learned AGP waives service of Rule for the respondents.

2. The petitioner was granted licence for holding a fire arm. In view of the criminal case filed against the petitioner, the Sub Divisional Magistrate, Anand passed the order dated 25.1.1995 (Annexure "A") cancelling the petitioner's license and also seizing the weapon. The

petitioner came to be acquitted in the criminal case and thereafter the petitioner preferred an application before the Sub Divisional Magistrate for renewal of the license alongwith the copy of the judgment of the acquittal and also preferred appeal before the District Magistrate. However, the Addl. District Magistrate rejected the appeal by order dated 22.12.1997 (Annexure "D") on the ground that the petitioner had submitted the appeal beyond the limitation period of 30 days. The petitioner, therefore, carried the matter in revision which revision application came to be dismissed by the order dated 11.11.1998 (Annexure "F") on the ground that under the rules there was no provision for revision against the appellate order of the District Magistrate. Hence, the petitioner has filed this petition.

3. Mr Bhatt, learned counsel for the petitioner has submitted that the cause of action for filing the appeal arose after the petitioner came to be acquitted by the criminal Court. The said judgment was delivered on 31.5.1997 and, therefore, the petitioner submitted his appeal on 2.9.1997. Hence, the Additional Divisional Magistrate, Anand ought not to have dismissed the appeal on the ground that it was filed 2 years and 7 months after the order of the Sub Divisional Magistrate.

4. Having heard the learned counsel for the petitioner and Mr KT Dave, learned AGP for the respondents, it appears that the Additional Divisional Magistrate erred in not considering that since the license was cancelled on the ground of pendency of a criminal case against the petitioner, the petitioner was justified in approaching the authorities after his acquittal in a criminal case and after getting a copy of the judgment and, therefore, the intervening period cannot be taken into consideration for rejecting the petitioner's appeal.

5. In view of the above discussion, the petition is allowed. The impugned order dated 22.12.1997 (Annexure "D") passed by the Additional Divisional Magistrate is set aside and the District Magistrate/Addl. District Magistrate, Anand shall hear and decide the petitioner's appeal against the order dated 25.1.1995 of the Sub Divisional Magistrate, Anand (Annexure "A") on merits and in accordance with law.

Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

August 8, 2000 (M.S. Shah, J.)

sundar/-